

CYNGOR SIR YNYS MON / ISLE OF ANGLESEY COUNTY COUNCIL	
COMMITTEE:	Standards Committee
DATE:	14 March 2018
REPORT TITLE:	Local Resolution Protocol
PURPOSE OF THE REPORT:	To respond to a request from this Committee on the 13 th September 2017
REPORT BY:	Head of Function(Council Business) Monitoring Officer
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1. BACKGROUND

- 1.1 The Public Services Ombudsman for Wales (PSOW) following revision of his test for investigating complaints, encouraged local authorities in Wales to deal with low level misconduct complaints between members through an informal local resolution protocol.
- 1.2 There were a number of objectives behind this development, including:-
 - 1.2.1 to reduce complaints submitted to the PSOW;
 - 1.2.2 earlier resolution of local issues to avoid escalation;
 - 1.2.3 the fostering of good and positive relationships between members (and between members and officers).
- 1.3 Each local authority in Wales was responsible for adopting its own protocol. The PSOW/Welsh Government (which strongly supported the initiative) did not specify the requirements of a protocol, nor provide any standard format to be followed.
- 1.4 The Protocol adopted and approved by the Isle of Anglesey County Council is attached as **Enclosure 1**. This Protocol is incorporated within the Council's Constitution.
- 1.5 At its meeting on the 13th September 2017 the Standards Committee requested this report, specifically to identify the Committee's legal powers in connection with the Protocol, and to receive any proposals for amendments/additions to the current arrangements.
- 1.6 The Protocol, although approved by full Council, has no statutory force and is a voluntary and informal scheme. It is not mandatory for any member to submit to

the Protocol but it would be hoped that they do so to ensure effective and fair operation of the scheme for all concerned and as part of sound local governance arrangements. It should be noted, though, that members are still encouraged to resolve any issues direct with one another or through group leaders.

- 1.7 Nevertheless, when using the scheme, care must be taken to ensure that those participating, including the Standards Committee panel tasked with dealing with any complaint, are aware of the legal limits of the Protocol and, in particular, its voluntary nature and the absence of any lawful sanctions available to a panel. Additionally, the process is confidential with any meetings to be conducted in private. The same applies to any papers/documents generated (which should be as few as possible).
- 1.8 In view of these restrictions, the Committee is asked to consider whether to amend the current Protocol to include an alternative and simpler method of attempting resolution; namely, by way of mediation. Members of the Standards Committee would need to receive relevant training in mediation to facilitate such meetings if they are expected to be a panel member (any panel consisting of two members).
- 1.9 It is also proposed that a complaint form be completed by any complainant, when triggering the process. This document would set out the issue, with the complainant being invited to choose their preferred method of resolution, and being asked to state what their expectations are from the process.
- 1.10 It is noted by the Standards Committee that some local authorities in Wales, in their version of the protocol, seek to impose sanctions on members who have been found to be in breach of the Code under this process. However, members of the Committee are again reminded that sanctions may only be imposed if there is lawful authority to do so. In an informal setting, which is without statutory force, the Monitoring Officer's view is that these outcomes must be limited to whatever both parties agree, otherwise the sanctions would (rightly) be open to challenge. Members of any Standards Committee panel would also be open to claims of ultra vires, that is, acting outside their lawful authority. A more punitive/sanction based protocol is not legally justified, nor does it sit well with the principles of supportive resolution rather than punishment.
- 1.11 In the circumstances, a new draft Protocol has been prepared to include the option of a more low level mediation meeting. The suggested amended Protocol is attached at **Enclosure 2** and was circulated by the Chair of the Standards Committee to the Council's four group leaders on the 1st February 2018, following a presentation to a meeting of the Group Leaders on the 25th January 2018. It was agreed at the Group Leaders' meeting that the group leaders would circulate the new draft Protocol to their group members (that is all 30 councillors) discuss the proposal in group and provide any feedback by 28th February 2018. As at the date of dispatching this report to Democratic Services for publication, no response had been received from any group leader.

2. RECOMMENDATION

- 2.1 To amend the Protocol (as per **Enclosure 2**) to:

- 2.1.1 improve clarity about the type of complaint which may be referred under the Protocol;
- 2.1.2 clarify the procedure and the two different methods of resolution;
- 2.1.3 clarify the limitations on the powers of the Standards Committee if a complaint, pursued under the Protocol, is upheld;
- 2.1.4 to authorise the Chair of the Standards Committee to present the report and the new draft Protocol to the County Council meeting on the 15th May 2018 and seek the support of elected members.

ISLE OF ANGLESEY COUNTY COUNCIL

LOCAL RESOLUTION PROTOCOL

Generally

1. The purpose of the Protocol is to promote high standards of conduct, with a view to fostering positive working relationships among Members, and between Members and Officers, to avoid spurious complaints to the Public Services Ombudsman for Wales (PSOW) and to safeguard the Council's reputation.
2. The Protocol will only apply to cases of alleged misconduct against Members under paragraphs 4(b) and 6(1)(d) of the Code of Conduct. That is to say, allegations of failure to show respect and consideration for others, or allegations that a Member has made vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, the Council.
3. The Protocol seeks to achieve swift mediation and reconciliation. It is not punitive but it may become relevant to sanction if a formal complaint, involving a pattern of similar conduct, is made to the PSOW.
4. The Protocol is not intended to interfere with, or take the place of, group or party discipline.
5. The Protocol is not intended to interfere with, or take the place of, any statutory or contractual rights which Officers may have.
6. The Protocol is not intended to oust the jurisdiction of the PSOW but, rather, to deal with a limited category of cases, where a breach of paragraphs 4(b) or 6(1)(d) of the Code may have occurred, but where such a finding would probably not result in disciplinary action. Such cases, at least individually, would not meet the PSOW's threshold test for investigation.

Procedure

7. A Member or Officer wishing to use the Protocol must put their complaint in writing to the Monitoring Officer, explaining when and where the alleged breach occurred, how and why paragraph 4(b) and/or 6(1)(d) have been breached, together with the details of any witnesses and any relevant documentation.
8. Any written complaint must be sent to the Monitoring Officer within 7 working days from the date of the event which is the subject of the complaint, or 7 working days from the date when the event came to the knowledge of the complainant.
9. The Monitoring Officer, or his/her representative, will send a copy of the complaint, and any supporting evidence, to the Member who is the subject of the complaint. That Member will have 7 working days, from receipt, within which to send a written

reply to the Monitoring Officer setting out their response and providing details of any witnesses and any relevant documentation.

10. Having received a reply from the Member complained of, or when the time for reply has elapsed, the Monitoring Officer will:-
 - copy the full response to the complainant;
 - arrange a meeting of an informal Panel of the Standards Committee to consider the complaint on the first convenient date available for all concerned.
11. The meeting of the Standards Committee Panel will take place in private and any paperwork which it receives, or which it generates, will remain confidential to the Panel, its advisors, and the parties. This is, however, subject to any legal duty to disclose e.g. to the PSOW in the event that matters escalate.
12. Any informal Panel of the Standards Committee will consist of two Members of the Committee, on a rotational basis, but will not include a Community Council Member.
13. The parties will be asked to attend the Panel and will be responsible for bringing along any witnesses upon whom they intend to rely.
14. In the absence of a party or witness it will be a matter for the discretion of the Panel as to whether or not they proceed, or reschedule.
15. If the complainant, or the Member complained of, is a Member of a political group then he/she may invite their Group Leader to attend the Panel. Any relevant Group Leader is not required to attend, but is encouraged to do so.
16. The Monitoring Officer, or his/her representative, will attend to advise the Panel.
17. The procedure of any Panel will be informal. The Panel will endeavour to be fair and even handed to both parties. There will be no rules of evidence, as such, but any witnesses called will only attend to share their information with the Panel; they will not "sit in" during the meeting.
18. After hearing from the parties, and any witnesses, together with the Group Leaders (should there be Group Leaders in attendance and should they wish to address the Panel) the Panel will then retire to private session, returning to express its view and to put forward any recommendations it may have for resolution. The Panel has no disciplinary powers but may make recommendations to Group Leaders individually, in relation to Members of their Group and, to the Group Leaders collectively in relation to any unaffiliated Member.
19. There will be no right of appeal under this process.
20. The parties will receive written confirmation of the Panel's findings and the outcome of all Panels will be reported, albeit in an anonymised format only, to all quarterly meetings of the Standards Committee.

21. The outcome of any Panel will also be discussed as a standing item at Group Leaders' meetings.

ISLE OF ANGLESEY COUNTY COUNCIL

LOCAL RESOLUTION PROTOCOL

Generally

1. The purpose of this informal Protocol is to:
 - promote high standards of conduct;
 - foster and maintain positive working relationships among members, and between members and officers;
 - address low level behavioural complaints which do not meet the Public Services Ombudsman for Wales' (PSOW) threshold in relation to evidence and public interest;
 - deal with matters arising as quickly as reasonably possible to avoid unnecessary escalation of issues;
 - safeguard the Council's reputation.
2. The Protocol will only apply to cases of alleged misconduct against members under two paragraphs of the Code of Conduct, namely:

4(b)

allegations of failure to show respect and consideration for others and/or

6(1)(d)

allegations that a member has made vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the Council.

The Protocol does not apply to complaints by third parties.

3. The Protocol seeks to achieve swift resolution and reconciliation. It is a voluntary arrangement and has no statutory basis. It is not a legal requirement to adopt such a Protocol but both the Welsh Government and the PSOW have advised, in the strongest terms, that Local Authorities should have such arrangements in place.
4. The Protocol is not intended to interfere with, or take the place of, group or party discipline; nor self regulation by members.
5. The Protocol is not intended to interfere with, or take the place of, any statutory or contractual rights which officers may have.
6. The Protocol is not intended to oust the jurisdiction of the PSOW but, rather, to deal with a limited category of complaints which would not meet the PSOW's threshold test for investigation.

Procedure

7. A member or officer wishing to use the Protocol must put their complaint in writing to the Monitoring Officer (form attached) explaining:
 - when and where the alleged breach occurred;
 - how and why paragraph 4(b) and/or 6(1)(d) have been breached;
 - the details of any witnesses and any relevant documentation.
8. Any written complaint must be sent to the Monitoring Officer within 14 days from the date of the event which is the subject of the complaint, or 14 days from the date when the event came to the knowledge of the complainant.
9. The Monitoring Officer, or his/her representative, will share the complaint with the member who is the subject of the complaint, and also supply them with any supporting documents received from the complainant.
10. The member receiving the complaint will have 14 days, from receipt, within which to send a written reply to the Monitoring Officer setting out their response and providing details of any witnesses and any relevant documentation.
11. Having received a reply from the member complained of, the Monitoring Officer will:-
 - copy the full response to the complainant;
 - arrange a mutually convenient meeting between a non-statutory panel of the Standards Committee, the complainant and the member who is the subject of the complaint. This will take place as soon as reasonably practicable.
12. The complainant shall, in their complaint form, choose their preferred method of resolution between, either:-
 - A mediation meeting or
 - A structured meeting
13. Either type of meeting with a Standards Committee panel shall take place in private, as there are no statutory requirements for such a meeting to be in public.
14. If no response has been received under paragraph 10 above, within the 14 day period, then no Standards Committee panel shall be called.
15. **Mediation Meeting**
 - 15.1 Any informal panel of the Standards Committee will consist of any two independent members of the Committee, on a rotational basis.
 - 15.2 If the mediation route is chosen, the parties and the informal panel will meet in private to discuss the complaint.

- 15.3 If the complainant, or the member complained of, is a member of a political group then s/he may invite their group leader to attend the panel. Any relevant group leader is not required to attend, but is encouraged to do so.
- 15.4 Paperwork shall be kept to a minimum and ideally used only as an aide memoire to recollect events or facts.
- 15.5 Members of the Standards Committee panel will only be allowed to facilitate a mediation meeting if they have received training for this purpose.
- 15.6 The Monitoring Officer, or their representative, shall be available for any advice or guidance but will only be present if required by any party, including the panel.
- 15.7 Any relevant paperwork which the meeting receives, or which it generates, will remain confidential to the panel, its advisors, and the parties. This is, however, subject to any legal duty to disclose e.g. to the PSOW in the event that matters escalate. Any panel notes made at the meeting will be retained by the Monitoring Officer until the end of the Council term.
- 15.8 The purpose of a mediation will be for the parties to come to an agreed resolution with the support of the panel. Therefore, the panel will not be expected to come to a view or make any findings on the facts but may make some recommendations. Any such recommendations shall not be binding.

16. **Structured Meeting**

- 16.1 Any informal panel of the Standards Committee will consist of two independent members of the Committee, on a rotational basis.
- 16.2 If the structured meeting route is chosen, the parties and the informal panel will meet in private to discuss the complaint.
- 16.3 This may be a more suitable forum for addressing a complaint if the matter is more complicated and requires consideration of more comprehensive paperwork and/or the potential calling and questioning of witnesses.
- 16.4 A lead member of the panel shall be identified at the start of the meeting and the order of the meeting stated to all in attendance
- 16.5 It is expected that the panel will receive information from both sides, sufficient to enable it to come to a view/make findings of fact. To that end the panel members may ask questions of the parties and any witnesses.
- 16.6 The Monitoring Officer, or representative, shall be in attendance to provide any advice.
- 16.7 Any relevant paperwork which the meeting receives, or which it generates, will remain confidential to the panel, its advisors, and the parties This is, however, subject to any legal duty to disclose e.g. to the PSOW in the event

that matters escalate .Any paperwork, including any notes made by panel members, will be retained by the Monitoring Officer until the end of the Council term.

- 16.8 If the complainant, or the member complained of, is a member of a political group then s/he may invite their group leader to attend the panel. Any relevant group leader is not required to attend, but is encouraged to do so.
- 16.9 The panel will endeavour to be fair and even handed to both parties and provide equal opportunities to present their point of view.
- 16.10 After hearing from the parties, and any witnesses, together with the group leaders (if relevant) the panel will retire to private session, returning to express its view and to put forward any recommendations it may have for resolution. The Panel has no powers to sanction but may make recommendations

Recommendations may consist of any of the following:

- No further action;
- An apology (including mutual apologies);
- Referral of member for training;
- Referral to the PSOW

16.11 There shall be no right of appeal under this process.

16.12 The parties shall receive written confirmation of the panel's findings.

LOCAL RESOLUTION PROTOCOL FORM TO REGISTER A COMPLAINT

A: Your Details

Surname:	Forename(s):	Title:
Address and Postcode:		
E-mail Address:		
Daytime contact telephone number:		
Mobile Number:		

Please state by which of the above methods you would prefer us to contact you

B: About your complaint (please continue your answers to the following questions on a separate sheet(s) if necessary)

- C.1 Name of the member you are complaining about:
- C.2 What do you think they did wrong?
- C.3 Do you think they broke the Members' Code of Conduct and why?
- C.4 Describe how you have been affected by the conduct which is the subject of your complaint
- C5. When did you first become aware of the matter which is the subject of your complaint?

C.6 Have you already tried to resolve your complaint with anyone else, e.g the member direct, group leader etc? If so, please give brief details of how, when you did so and any outcome.

C.7 Please tick your preferred method of resolution under the Protocol

Mediation Meeting ☐

Structured Meeting ☐

C.8 What is your expectation at the end of the process?

C.9 If you have any documents to support your complaint, please attach to this form.

C.10 Please give name and contact details of any witness/s who has/have agreed to support your complaint?

Signature: _____

Date: _____

When you have completed this form, please send it to:

The Monitoring Officer,

Legal Section, Council Offices, Llangefni, LL77 7TW

Email : lbxc@anglesey.gov.uk

- Please note that a copy of your completed form and any documents which you attach will be shared with the member who is the subject of your complaint.